

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

May 23, 2014

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**Amendment to Prior Action of November 8, 2013,
Item L-1, Authorization to Enter Into Agreements
With the Private Property Owners of 1071 Koohoo Place, 1081 Koohoo Place,
1111 Koohoo Place, 1115 Koohoo Place, 1123 Koohoo Place, 1129 Koohoo Place,
1129A Koohoo Place, 1135 Koohoo Place, 1141 Koohoo Place
for
Job No. J45C041A Lanikai Rockfall Mitigation, Kailua, Oahu, Hawaii**

BACKGROUND:

At its regular meeting on November 8, 2013, under agenda item L-1, the Board approved and authorized the Chairperson to enter into agreements with nine private property owners along Koohoo Place. The agreement would allow for the right of entry onto private property during construction and turn over the ownership and maintenance responsibilities of the improvements to the private property owners after the completion of construction. The Board also declared this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment pursuant to the requirements under Chapter 343, Hawaii Revised Statutes, and Chapter 11-200, Hawaii Administrative Rules. A copy of the November 8, 2013, submittal and Draft Agreement is attached as **Exhibit A**.

The project consists of installing rockfall impact fencing on private property, located below TMK 4-2-02:17, a State-owned parcel on which boulders and rock outcrops with a potential to fall in the near future were discovered. A copy of the site plan showing the location of the fencing is attached as **Exhibit B**.

AMENDMENT OF AGREEMENT:

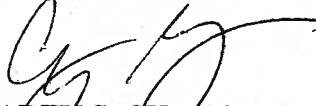
The private property owners formed a homeowners association (Association) for the ownership and ongoing maintenance of the rockfall impact fences. The Engineering Division, on behalf of the Division of Forestry and Wildlife, desires to amend the prior approval by the Board on November 8, 2013, from individual agreements with the private property owners to one (1) agreement with the Association.

A copy of the Amended Draft Agreement (Agreement), which is subject to non-substance change is attached as **Exhibit C**.

RECOMMENDATION:

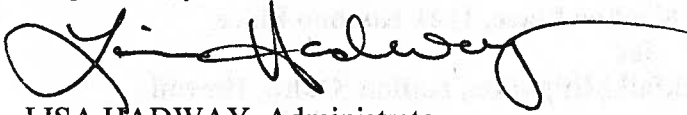
1. Amend its prior Board's action of November 8, 2013, under agenda item L-1 by authorizing the Chairperson to sign the Agreement with the Association and other documents pertaining to the project, subject to the approval to form by the Department of Attorney General and to take any other appropriate action needed to address the situation:

Respectfully submitted,



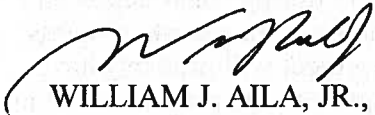
CARTY S. CHANG
Chief Engineer

Requested by:



LISA HADWAY, Administrator
Division of Forestry and Wildlife

Approved For Submittal:



WILLIAM J. AILA, JR., Chairperson

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

November 8, 2013

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**Authorization to Enter Into Agreements
With the Private Property Owners of 1071 Koohoo Place, 1081 Koohoo Place,
1111 Koohoo Place, 1115 Koohoo Place, 1123 Koohoo Place, 1129 Koohoo Place,
1129A Koohoo Place, 1135 Koohoo Place, 1141 Koohoo Place
and
Declaration of Exemption from Environmental Assessment Requirements Chapter 343, HRS,
and Chapter 11-200, Hawaii Administrative Rules
for
Job No. J45C041A Lanikai Rockfall Mitigation, Kailua, Oahu, Hawaii**

BACKGROUND:

On November 4, 2007, a ten-ton boulder damaged a private property along Koohoo Place in Kailua. An inspection by specialists of AECOM Technical Services, Inc. (AECOM) has determined that the source of the rockfall was located in private property. During the investigation, various boulders and rock outcrops, with the potential to fall in the near future were discovered within State lands located on parcel TMK 4-2-02:17.

HRS CHAPTER 343 EXEMPTION:

In accordance with Hawaii Administrative Rule Section 11-200-8(a) for the Department of Land and Natural Resources, as reviewed and concurred upon by the Environmental Council on July 13, 2011, the subject project is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repair or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing".

Refer to attached Exemption Notification labeled Exhibit A.

AGREEMENT:

The Engineering Division on behalf of the Division of Forestry and Wildlife desires to enter into agreements with nine (9) private property owners listed below for the construction of Job No. J45CO41A, Lanikai Rockfall Mitigation, Kailua, Oahu. The agreement would allow for the right-of-entry during construction & after construction, the ownership and maintenance responsibilities of the improvements would be turned over to the private property owners.

EXHIBIT A

**Approved by the Board of
Land & Natural Resources
at the meeting held on**

NOV - 8, 2013

ITEM L-1

1071 Koohoo Place (TMK: 4-3-06:13),
1081 Koohoo Place (TMK: 4-3-06:12),
1111 Koohoo Place (TMK: 4-3-06:74),
1115 Koohoo Place (TMK: 4-3-06:11),
1123 Koohoo Place (TMK: 4-3-05:43),
1129 Koohoo Place (TMK: 4-3-05:42:1),
1129A Koohoo Place (TMK: 4-3-05:42:2),
1135 Koohoo Place (TMK: 4-3-05:41), and
1141 Koohoo Place (TMK: 4-3-05:38)

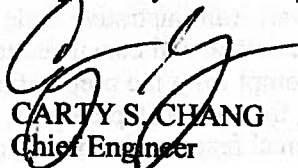
A copy of the Draft Agreement, which is subject to change, is attached as Exhibit B.

RECOMMENDATION:

1. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Board authorize the Chairperson to sign Agreements with the following nine private property owners and other documents pertaining to the project, subject to the approval to form by the Department of Attorney General and to take any other appropriate action needed to address the situation:

1071 Koohoo Place (TMK: 4-3-06:13),
1081 Koohoo Place (TMK: 4-3-06:12),
1111 Koohoo Place (TMK: 4-3-06:74),
1115 Koohoo Place (TMK: 4-3-06:11),
1123 Koohoo Place (TMK: 4-3-05:43),
1129 Koohoo Place (TMK: 4-3-05:42:1),
1129A Koohoo Place (TMK: 4-3-05:42:2),
1135 Koohoo Place (TMK: 4-3-05:41), and
1141 Koohoo Place (TMK: 4-3-05:38)

Respectfully submitted,


CARTY S. CHANG
Chief Engineer

Requested by:


ROGER H. IMOTO, Administrator
Division of Forestry and Wildlife

Approved For Submittal:


WILLIAM J. AILA, JR., Chairperson

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

ENGINEERING DIVISION
POST OFFICE BOX 373
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Lanikai Rockfall Mitigation Project, Kailua, Oahu, Hawaii
Job Number:	J45CO41A
Project Location:	Lanikai, Kailua, Oahu, Hawaii
Project Description:	Scope of work: Installation of rockfall impact fences and accessory components on landowners' properties. Demolition and removal of vegetation and rooted trees within the vicinity of the location of the rockfall impact fences.
Chapter 343 Trigger(s)	Use of State Funds
Exemption Class & Description:	Exemption Class No. 1, operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR 11-200-8(a)(1)].
Exemption Item Number and Description:	Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources.
Recommendation	It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


William J. Aila, Jr., Chairperson

10/22/13
Date

EXHIBIT A

LANIKAI ROCKFALL REMEDIATION PROJECT AGREEMENT

This LANIKAI ROCKFALL REMEDIATION PROJECT AGREEMENT ("AGREEMENT") is made and entered into by and between the STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, through its Board of Land and Natural Resources, (the "STATE") and _____, ("LANDOWNER").

WHEREAS, the real property that is subject to this AGREEMENT consists of land in East Hawaii on the Lanikai hillside located at _____, Hawaii, and further identified as TMK No. _____ and owned by the LANDOWNER ("Property").

WHEREAS, the STATE wishes to enter LANDOWNER'S Property for the purpose of remediating potential rockfall hazards on the Property; and

WHEREAS, the scope of work to be conducted on LANDOWNER's Property includes installation of rockfall impacting fences on the Property (see DLNR Job No. J45C041A; Lanikai Rockfall Mitigation Project), as shown on the STATE'S plan identified as ATTACHMENT "A" to this AGREEMENT ("PROJECT"); and

WHEREAS, funding for the PROJECT has been authorized by Act 162, SLH 2009, Item A-10, as amended by Act 180, SLH 2010, Item A-10 for design, and Act 164, SLH 2011, Item A-17 for construction.

NOW, THEREFORE, in consideration of the above and all promises, terms, and conditions contained herein, the parties hereto mutually agree as follows:

A. RIGHT OF ENTRY

A right of entry to the STATE is granted by LANDOWNER over LANDOWNER'S Property as follows:

EXHIBIT B

1. Grant of Entry. LANDOWNER hereby grants to the STATE, its officers, employees, consultants, and contractors, permission to enter upon the Property for the PROJECT, which is admitted to be for a public purpose. The STATE will take reasonable steps to ensure that contractors the STATE selects for the PROJECT will permit the LANDOWNER to exercise its existing rights in and to the PROPERTY, including, but not limited to, access over and through the PROPERTY, as long as said exercise of rights does not unreasonably delay or interfere with the PROJECT.

2. Utilization. This right of entry for the PROJECT shall be utilized from Monday through Friday, between the hours of 8:00 a.m. and 4:30 p.m., for the duration of the PROJECT. This right of entry may be utilized on other days or at other times under urgent or emergency circumstances, in which case the STATE, its consultants, or its contractors, will make all reasonable efforts to notify LANDOWNER beforehand, giving LANDOWNER as much notification time as possible.

3. STATE'S Responsibility. During the course of work on the PROJECT and until the transfer of ownership of the improvements to LANDOWNER occurs, as described below, the STATE shall be responsible, to the extent provided by law, for damage or injury caused by the STATE's officers and employees in the scope of their employment provided that the STATE's liability for such damage or injury has been determined by a court or agreed to by the STATE. The STATE shall pay for such damage and injury, provided that funds are appropriated and allotted for that purpose.

4. Construction Contractor's Indemnity, Defense, and Insurance. The State will use its best efforts to cause the construction contractor for the PROJECT to defend, indemnify, hold harmless, and insure LANDOWNER to the same extent as the STATE.

5. No Unreasonable Interference. LANDOWNER shall not unreasonably interfere with the PROJECT.

6. Termination of Right of Entry. The right of entry shall terminate twelve (12) months after the execution of this AGREEMENT or upon completion of the PROJECT, whichever occurs earlier.

B. IMPROVEMENTS CONSTRUCTED ON PROPERTY

Improvements shall be constructed on LANDOWNER'S Property as follows:

1. Improvements. LANDOWNER agrees to allow the STATE to construct improvements on the Property ("Improvements"), on LANDOWNER'S behalf, as shown on the STATE'S plan, identified as ATTACHMENT A to this AGREEMENT, subject to the provisions of this AGREEMENT. The installation of the Improvements will consist of the following:

a. Demolition and removal of vegetation and/or rooted trees within the vicinity of the location of the Rockfall Impact Fences; and

b. Construction of Rockfall Impact Fences and accessory components on LANDOWNER'S Property.

2. Acceptance of Plan and Design of Improvements. By the execution of this AGREEMENT by LANDOWNER, LANDOWNER acknowledges that LANDOWNER has reviewed and accepted the STATE'S plan and design of the Improvements.

3. Ownership of Improvements. Upon the completion of the PROJECT, the ownership of the Improvements constructed on LANDOWNER'S Property and all risks, responsibilities, and liabilities applicable to the Improvements shall automatically vest in the LANDOWNER. The STATE shall notify LANDOWNER in writing, at the address indicated

above, of the completion of the PROJECT and transfer of the ownership of the Improvements to the LANDOWNER.

4. Repair and Maintenance of Improvements. Upon the vesting of ownership of the Improvements in the LANDOWNER, LANDOWNER shall be solely responsible for the upkeep, repair, and maintenance of all Improvements in good order and condition in accordance with the "Maintenance and Repair Instructions," attached as ATTACHMENT B, at LANDOWNER'S sole cost and expense. The construction of the Improvements on LANDOWNER'S Property does not affect or release any of LANDOWNER'S responsibility to maintain any portion of LANDOWNER'S Property above the Improvements. LANDOWNER understands and agrees that if LANDOWNER'S Property includes any part of the hillside, LANDOWNER must also maintain the portion of the hillside owned by LANDOWNER in accordance with relevant Hawaii Revised Statutes.

5. Release by LANDOWNER. In consideration of the Improvements to be constructed on LANDOWNER'S Property and owned by LANDOWNER, in behalf of LANDOWNER and LANDOWNER'S heirs, beneficiaries, executors, administrators, representatives, successors, assigns, and any person or entity acting for, under, or through them, LANDOWNER hereby releases and forever discharges the State of Hawaii, its officials, employees, representatives, and agents, from and on account of any and all claims, actions, causes of action, claims for relief, damages, injuries, losses, punitive or treble damages, liens, debts, costs, interest, attorneys' fees, experts' or consultants' fees, expenses, and other relief, whether in law or in equity, whether known or unknown, suspected or unsuspected, fixed or contingent, past, present, and future, whether sounding in tort, contract, statute or otherwise, resulting from, arising out of, or connected with the Lanikai hillside and the PROJECT.

LANDOWNER further acknowledges and agrees that the STATE, by entering into this AGREEMENT, does not hereby assume or undertake any duty or responsibility, contractual or otherwise, to complete the PROJECT or to perform any other additional or future work on the PROPERTY. LANDOWNER also acknowledges that the STATE's undertaking of the PROJECT is dependent upon the participation of other landowners in the surrounding area. The failure of other landowners to participate in this PROJECT may prevent the STATE from undertaking or completing the PROJECT.

6. Indemnity and Defense by LANDOWNER. Upon transfer of ownership of the Improvements to LANDOWNER, LANDOWNER agrees on behalf of LANDOWNER and LANDOWNER'S heirs, beneficiaries, executors, administrators, representatives, successors, assigns, and any person or entity acting for, under, or through them, to indemnify, defend, and hold harmless the State of Hawaii, its officials, employees, representatives, and agents, against any claim or liability, including all loss, damages, costs, expenses, and attorneys' fees, for any damage to real or personal property, including environmental damage, or injury to or death of persons when such damage, injury, or death results from, arises out of, or is connected with the portion of Lanikai hillside owned by LANDOWNER, the State land above the Property, the PROJECT or the Improvements.

C. Other Terms and Conditions

The parties hereto further agree as follows:

1. No Admission of Liability. LANDOWNER understands and agrees that the State of Hawaii does not admit to any liability or responsibility regarding any damage or injury to the Property, personal property, or persons caused by or related to Lanikai hillside, rockfall, the PROJECT or the Improvements.

2. Runs with the Land. This AGREEMENT shall inure to the benefit of and run with the land that is the subject of this AGREEMENT and which is referred to herein as the Property. This AGREEMENT shall be filed with the Bureau of Conveyances or Land Court, as appropriate, on or after the execution of the AGREEMENT.

3. Effective Date. This AGREEMENT shall become effective upon its execution by all of the parties to the AGREEMENT.

4. Contractual Disputes. If there is any dispute between the STATE and LANDOWNER regarding the interpretation, breach, or enforcement of this AGREEMENT, the First Circuit Court of the State of Hawaii shall have jurisdiction over such disputes.

5. Amendment. This AGREEMENT shall not be amended except in writing signed by the parties.

6. Singular, Plural. In this AGREEMENT, the singular shall include the plural, and the plural shall include the singular, as the case may be.

8. Headings, Captions. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

9. Counterparts. This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same AGREEMENT, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

10. No Party Deemed Drafter. All signatories to this AGREEMENT and their attorneys have had the opportunity to review, comment upon, and amend this AGREEMENT. All signatories agree that the language hereof is complete, integrated, and unambiguous. If there is ever a dispute as to the meaning of this AGREEMENT or any part thereof, no party shall be deemed the drafter of the AGREEMENT for purposes of the canon of construction that an instrument is construed against its drafter.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT this

_____ day of _____, 2013.

STATE:

Approved by the Board
of Land and Natural Resources
at its meeting held on
December 8, 2006.

By: William J. Aila, Jr.
Chairperson, Board of Land and Natural
Resources

LANDOWNER:

APPROVED AS TO FORM:

Deputy Attorney General

AFTER RECORDATION, RETURN BY MAIL ☐ OR PICKUP ☐ :

TYPE OF DOCUMENT:

(TOTAL PAGES: _____)

LANIKAI ROCKFALL MITIGATION PROJECT AGREEMENT

PARTIES TO DOCUMENT:

STATE: State of Hawaii, Department of Land and Natural Resources

LANDOWNERS: Michael Andre Berube, unmarried; Allen L. Clark, as Trustee under that certain Allen L. Clark Trust dated October 25, 2001 and Jennifer Cook Clark, as Trustee under that certain unrecorded Jennifer Cook Clark Trust dated October 25, 2001; Lois B. Crozer, Trustee of the Lois B. Crozer Trust dated December 5, 2003; Louis Frank D'Avanzo and Tanya Jessica D'Avanzo, husband and wife; Gilbert Kirchner, Jr. and Kim Kirchner, Co-Trustees of the Kirchner Family Living Trust under agreement dated May 28, 2002; Jon Kenneth Myers and Bonnie Aloma Seto, husband and wife; George F. Nardin, Trustee of the George F. Nardin Trust dated August 10, 2012; and Marianne K. Whiting, Trustee of the Marianne K. Whiting Trust dated April 15, 2005

ASSOCIATION: The Ko'oho'o Hillside Hui, a nonprofit corporation

TAX MAP KEYS FOR PROPERTY: : (1) 4-3-005-040, 041, 042 and 043; and (1) 4-3-006- 011, 012, 013 and 074

LANIKAI ROCKFALL MITIGATION PROJECT AGREEMENT

This LANIKAI ROCKFALL MITIGATION PROJECT AGREEMENT ("AGREEMENT") is made and entered into by and among the STATE OF HAWAII, DEPARTMENT OF LAND AND

NATURAL RESOURCES, through its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813 (the "STATE"); The Ko'oho'o Hillside Hui, a nonprofit corporation ("ASSOCIATION"); Michael Andre Berube, unmarried, as tenant in severalty, who is the owner of the property described in Exhibit A-1 attached hereto and made a part hereof, and whose address is 1127-B Aalapapa Dr., Kailua, Hawaii 96734 ("BERUBE"); Allen L. Clark, as Trustee under that certain unrecorded Allen L. Clark Trust dated October 25, 2001, with full powers to sell, mortgage, lease or otherwise deal with the land, as to an undivided one-half (1/2) interest, the property described in Exhibit A-2 attached hereto and made a part hereof, and Jennifer Cook Clark, as Trustee under that certain unrecorded Jennifer Cook Clark Trust dated October 25, 2001, with full powers to sell, mortgage, lease or otherwise deal with, as to an undivided one-half (1/2) interest, the property described in Exhibit A-2, each of whose address is 1135 Koohoo Place, Kailua, Hawaii, 96734 (together, "CLARK"); Lois B. Crozer, Trustee of the Lois B. Crozer Trust dated December 5, 2003, with full powers to sell, mortgage, lease or otherwise deal with the property described in Exhibit A-3 attached hereto and made a part hereof, whose address is 1081 Koohoo Place, Kailua, Hawaii 96734 ("CROZER"); Louis Frank D'Avanzo and Tanya Jessica D'Avanzo, husband and wife, who are the owners of the property described in Exhibit A-4 attached hereto and made a part hereof and whose address is 1123 Koohoo Place, Kailua, Hawaii 96734-3276 (together, "D'AVANZO"); Gilbert Kirchner, Jr. and Kim Kirchner, Co-Trustees of the Kirchner Family Living Trust under agreement dated May 28, 2002, with full powers to sell, mortgage, lease or otherwise deal with the property described in Exhibit A-5 attached hereto and made a part hereof, and whose address is 611 Seacliff Drive, Aptos, California 95003 (together, "KIRCHNER"); Jon Kenneth Myers and Bonnie Aloma Seto, husband and wife, as tenants by the entirety, who are the owners of the property described in Exhibit A-6 attached hereto and made a part hereof, and whose address is P.O. Box 277, Kentfield,

California 94914-0277 (together, "MYERS"); George F. Nardin, Trustee of the George F. Nardin Trust dated August 10, 2012, with full powers as set forth in the Declaration of Trust recorded as Document T-8260268 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii and noted on TCT No. 487,843 to sell, mortgage, lease, or otherwise deal with the property described in Exhibit A-7 attached hereto and made a part hereof, and whose address is 1115 Kooahoo Place, Kailua, Hawaii 96734 ("NARDIN"); and Marianne K. Whiting, Trustee of the Marianne K. Whiting Trust dated April 15, 2005, with full powers to sell, mortgage, lease or otherwise deal with the property described in Exhibit A-8 attached hereto and made a part hereof, and whose address is 1111 Kooahoo Place, Kailua, Hawaii 96734 ("WHITING"). BERUBE, CLARK, CROZER, D'AVANZO, MYERS, NARDIN, MYERS and WHITING are referred to collectively herein as "LANDOWNERS".

WHEREAS, the real property that is subject to this AGREEMENT consists of land in Hawaii on the Lanikai hillside, situate at Kailua, Koolaupoko, City and County of Honolulu, State of Hawaii, and further identified in Exhibits A-1 through A-8 ("Property"); and

WHEREAS, the STATE wishes to enter the Property for the purpose of installing rockfall impact fences on the Property pursuant to the terms of this Agreement; and

WHEREAS, the scope of work to be conducted on the Property is limited to installation of rockfall impact fences on the Property (see DLNR Job No. J45C041A; Lanikai Rockfall Mitigation Project), as set forth below ("PROJECT"); and

WHEREAS, funding for the PROJECT has been authorized by Act 162, SLH 2009, Item A-10, as amended by Act 180, SLH 2010, Item A-10 for design, and Act 164, SLH 2011, Item A-17 for construction.

NOW, THEREFORE, in consideration of the above and all promises, terms, and conditions contained herein, the parties hereto mutually agree as follows:

A. RIGHT OF ENTRY.

A right of entry is granted by LANDOWNERS to the STATE over the Property as follows:

1. Grant of Entry. LANDOWNERS hereby grant to the STATE, its designated officers, employees, consultants, contractors, and potential contractors (during the site visit to bid on the construction contract) permission to enter upon the project area located on the Property as designated on the design plans for the PROJECT ("Project Area"), which PROJECT is admitted to be for a public purpose. Each LANDOWNER agrees that he/she shall not take any action in the Project Area that will unreasonably delay or interfere with the PROJECT and, except in the case of an emergency that requires such entry or with permission from the Contractor (as defined below), shall not enter the Project Area during the period of time that the PROJECT is under construction.

2. Utilization. This right of entry for the PROJECT shall be utilized from Monday through Friday, between the hours of 7:30 a.m and 4:30 p.m., for the duration of the PROJECT. This right of entry may be utilized on other days or at other times under urgent or emergency circumstances, in which case the STATE, its consultants, or its contractors, will make all reasonable efforts to notify LANDOWNERS beforehand, giving LANDOWNERS as much notification time as possible.

3. STATE'S Responsibility. During the course of work on the PROJECT and until the transfer of ownership of the Fences (as defined below) to the ASSOCIATION occurs, as described below, the STATE shall be responsible, to the extent provided by law, for damage or injury caused by the STATE's officers and employees in the scope of their employment provided that the STATE's liability for such damage or injury has been determined by a court or agreed to by the STATE. The STATE shall pay for such damage and injury, provided that funds are appropriated and allotted for that purpose.

4. Contractor's Indemnity, Defense, and Insurance. The STATE will cause the

construction contractor for the PROJECT ("Contractor") to defend, indemnify, hold harmless, and insure LANDOWNERS with respect to the PROJECT to the same extent as the Contractor is required to defend, indemnify, hold harmless and insure the STATE. The Contractor shall be required to add LANDOWNERS as additional insureds to any liability insurance policy(ies) carried by the Contractor with respect to the PROJECT.

5. No Unreasonable Interference. LANDOWNERS shall not unreasonably interfere with the PROJECT.

6. Termination of Right of Entry. The right of entry shall terminate on the earlier of (a) twelve (12) months after the date the STATE has obtained the last discretionary permit required for the PROJECT (the "Permit Date") and (b) the Transfer Date (as defined below). Notwithstanding the foregoing, if completion of the PROJECT is delayed by unforeseen circumstances as provided below, the right of entry shall continue for such longer period as may be reasonably required and shall terminate with completion of the construction.

B. IMPROVEMENTS CONSTRUCTED ON PROPERTY.

The PROJECT shall be constructed on LANDOWNERS' Property as follows:

1. PROJECT. LANDOWNERS agree, subject to the provisions of this AGREEMENT, to allow the STATE to undertake the PROJECT on the Property. The PROJECT will consist of the following:

a. Demolition and removal of rocks that are within the alignment of the impact fences, if any, backfilling of depressions along the alignment of the impact fences, if any, and cutting and removal of vegetation and/or rooted trees within the vicinity of the location of the rockfall impact fences; and

b. Construction of rockfall impact fences and accessory components ("Fences") on the Property.

2. **CONDITIONS TO AGREEMENT.** LANDOWNERS' agreement is conditioned upon the following:

a. STATE shall undertake the PROJECT in accordance with the STATE'S bid documents for the PROJECT, which includes the plan identified as Exhibit B attached hereto and incorporated herein; and

b. LANDOWNERS shall have the opportunity to have the performance specifications in such bid documents ("Performance Specifications") reviewed and approved by LANDOWNERS' consultant prior to submission of the PROJECT for bids. LANDOWNERS' consultant must complete his review within seven days of being provided the Performance Specifications.

c. The Fences shall be constructed on areas of the Property zoned "conservation" and in no event shall the STATE construct any of the Fences within twenty feet of any portion of the Property zoned "urban".

d. Once the construction of the PROJECT is begun, the STATE shall complete the PROJECT within twelve (12) months after the Permit Date, provided that if the PROJECT cannot be completed within such period of time due to unforeseen circumstances (e.g. the discovery of burial grounds in the Project Area), the STATE shall complete the PROJECT in such longer period as may be reasonably required.

3. Review of Bids. LANDOWNERS shall have no right to approve or reject or otherwise participate in the STATE's process for selecting the Contractor or awarding the contract on the PROJECT. However, STATE shall provide LANDOWNERS with notice of the selected bid (including the identity of the Contractor that submitted the selected bid).

4. Ownership of Fences and Assignment of Warranties. STATE shall provide two weeks advance notice to LANDOWNERS of the date and time of the STATE'S final inspection of the

Fences. LANDOWNERS shall have the option to engage a consultant to attend the final inspection of the Fences to confirm that the Fences have been installed consistent with the bid packet including the Performance Specifications. Upon (a) the completion of the PROJECT consistent with the bid packet including the Performance Specifications and (b) the performance of the final inspection as aforesaid, the STATE shall transfer ownership of the Fences constructed on the Property to the ASSOCIATION by executing and delivering to the Association a bill of sale therefor which bill of sale shall include an assignment to the ASSOCIATION of all manufacturer's and contractor's warranties relating in any manner to the fabrication and installation of the Fences. Upon the transfer of ownership of the Fences, all risks, responsibilities, and liabilities applicable to the Fences shall automatically vest in the ASSOCIATION. The ASSOCIATION shall notify LANDOWNERS in writing, at their respective addresses indicated above, of the completion of the PROJECT and transfer of the ownership of the Fences and warranties to the ASSOCIATION. The date that such transfer takes place shall be referred to herein as the "Transfer Date".

5. Repair and Maintenance of Fences. Effective as of the Transfer Date, the ASSOCIATION shall be solely responsible for the upkeep, repair, and maintenance of the Fences in accordance with the "Maintenance and Repair Instructions" attached hereto and incorporated herein as Exhibit C, at ASSOCIATION'S sole cost and expense.

6. Release by LANDOWNERS. Effective as of the Transfer Date, in consideration of the installation of the Fences on the Property and assignment of warranties pursuant to this Agreement, each LANDOWNER, on behalf of such LANDOWNER and such LANDOWNER'S heirs, beneficiaries, executors, administrators, representatives, successors, assigns, and any person or entity acting for, under, or through them, releases and forever discharges the State of Hawaii, its officials, employees, representatives, and agents, from and on account of any and all claims, actions, causes of

action, claims for relief, damages, injuries, losses, punitive or treble damages, liens, debts, costs, interest, attorneys' fees, experts' or consultants' fees, expenses, and other relief, whether in law or in equity, whether known or unknown, suspected or unsuspected, fixed or contingent, whether sounding in tort, contract, statute or otherwise, resulting from, arising out of, or connected with the PROJECT and boulders falling from the Lanikai hillside owned by LANDOWNERS or from the STATE land above the Property (collectively, "Claims"), provided such Claims arise after the Transfer Date.

7. Indemnity and Defense by ASSOCIATION. Upon transfer of ownership of the Fences to ASSOCIATION, ASSOCIATION agrees on behalf of ASSOCIATION and ASSOCIATION'S successors and assigns, to indemnify, defend, and hold harmless the State of Hawaii, its officials, employees, representatives, and agents, against any claim or liability, including all loss, damages, costs, expenses, and attorneys' fees, for any damage to real or personal property, including environmental damage, or injury to or death of persons occurring on land owned by LANDOWNERS when such damage, injury, or death results from, arises out of, or is connected with, boulders falling from the Lanikai hillside owned by LANDOWNERS or from the STATE land above the Property. ASSOCIATION shall not indemnify, defend or hold the STATE harmless for any injury to or death of persons who were on STATE land at the time a boulder began falling, but subsequently landed on LANDOWNERS' land as a result of such boulder falling. For clarity, as used herein, "boulder" does not include the man-made "pillboxes" located on STATE land above the Property.

8. Revision to Schematic Design. LANDOWNERS acknowledge and agree that the schematic design of the Fences ("Schematic Design") included one upper level fence and one lower level fence over the portion of the Property described in Exhibit A-6 ("Myers Property") and that, at the request of Myers, the Schematic Design was revised to extend the upper level fence across the Myers property and to eliminate the lower level fence ("Revised Design"). Based on the rockfall

engineering analysis provided by the STATE'S expert, which analysis concluded that the Revised Design would substantially mitigate rockfall hazard with a small increase in risk on the Myers Property and with no increase in risk on the remaining portions of the Property, LANDOWNERS accept the Revised Design.

C. Other Terms and Conditions

The parties hereto further agree as follows:

1. No Admission of Liability. LANDOWNERS understand and agree that the State of Hawaii does not admit to any liability or responsibility regarding any damage or injury to the Property, personal property, or persons caused by or related to Lanikai hillside, rockfall, the PROJECT or the Fences.

2. Runs with the Land. This AGREEMENT shall inure to the benefit of and run with the land that is the subject of this AGREEMENT and which is referred to herein as the Property. This AGREEMENT shall be filed with the Bureau of Conveyances or Land Court, as appropriate, on or after the execution of the AGREEMENT.

3. Effective Date. This AGREEMENT shall become effective upon its execution by all of the parties to the AGREEMENT.

4. Supersedes Prior Agreements. This AGREEMENT supersedes and any all prior agreements between the STATE and any of the LANDOWNERS relating to the PROJECT.

5. Contractual Disputes. If there is any dispute among the STATE, ASSOCIATION and LANDOWNERS regarding the interpretation, breach, or enforcement of this AGREEMENT, the First Circuit Court of the State of Hawaii shall have jurisdiction over such disputes.

6. Amendment. This AGREEMENT shall not be amended except in writing signed by the parties.

7. Singular, Plural. In this AGREEMENT, the singular shall include the plural, and the plural shall include the singular, as the case may be.

8. Headings, Captions. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.

9. Counterparts. This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same AGREEMENT, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

10. No Party Deemed Drafter. All signatories to this AGREEMENT and their attorneys have had the opportunity to review, comment upon, and amend this AGREEMENT. All signatories agree that the language hereof is complete, integrated, and unambiguous. If there is ever a dispute as to the meaning of this AGREEMENT or any part thereof, no party shall be deemed the drafter of the AGREEMENT for purposes of the canon of construction that an instrument is construed against its drafter.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGE TO LANIKAI ROCKFALL MITIGATION PROJECT AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT this

_____ day of _____, 2014.

STATE:

Approved by the Board
of Land and Natural Resources
at its meeting held on May 23,
2014.

WILLIAM J. AILA, JR.
Its Chairperson, Board of Land and Natural
Resources

ASSOCIATION:
THE KO'OHŌ'O HILLSIDE HUI

By _____
Name:
Title:

By _____
Name:
Title:

LANDOWNERS:

MICHAEL ANDRE BERUBE

ALLEN L. CLARK, as Trustee aforesaid

JENNIFER COOK CLARK, as Trustee aforesaid

[CONTINUATION OF SIGNATURE PAGE TO LANIKAI ROCKFALL MITIGATION
PROJECT AGREEMENT]

LOIS B. CROZER, as Trustee aforesaid

LOUIS FRANK D'AVANZO

TANYA JESSICA D'AVANZO

GILBERT KIRCHNER, JR., as Trustee aforesaid

KIM KIRCHNER, as Trustee aforesaid

JON KENNETH MYERS

BONNIE ALOMA SETO

GEORGE F. NARDIN, as Trustee aforesaid

MARIANNE K. WHITING, as Trustee aforesaid

APPROVED AS TO FORM:

LINDA L. W. CHOW Deputy Attorney General

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

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)
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SS.

On this the ____ day of _____, 2014, before me personally

appeared **WILLIAM J. AILA, JR.** ☐ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____

No. of Pages: _____

Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

On this the ____ day of _____, 2014, before me personally
appeared _____ and _____,
Name of Signer Name of Signer

☐ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being
by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the
free act and deed of such person(s), and if applicable in the capacities shown, having been duly
authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary _____ Date of Certificate _____

Printed Name of Notary _____

(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

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SS.

On this the ____ day of _____, 2014, before me personally

appeared **MICHAEL ANDRE BERUBE** ☐ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

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SS.

On this the ____ day of _____, 2014, before me personally
appeared **ALLEN L. CLARK** ☐ personally known to me -OR- ☐ proved to me on the
basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person
executed the foregoing instrument as the free act and deed of such person, and if applicable in the
capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

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SS.

On this the ____ day of _____, 2014, before me personally

appeared **JENNIFER COOK CLARK** ☐ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____

No. of Pages: _____

Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

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SS.

On this the ____ day of _____, 2014, before me personally

appeared **LOIS B. CROZER** ☐ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

On this the ____ day of _____, 2014, before me personally
appeared **LOUIS FRANK D'AVANZO** and **TANYA JESSICA D'AVANZO** ☐ personally
known to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly
sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacities shown, having been duly authorized to
execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)	
Document Identification or Description: _____	
_____ Doc. Date: _____	
No. of Pages: _____	Jurisdiction: _____ Circuit (in which notarial act is performed)
Signature of Notary _____	Date of Certificate _____
Printed Name of Notary _____	(Official Stamp or Seal)

STATE OF CALIFORNIA

COUNTY OF _____

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SS.

On this the ____ day of _____, 2014, before me personally

appeared **GILBERT KIRCHNER, JR.** and **KIM KIRCHNER** ☐ personally known to me

-OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly sworn or

affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of

such person(s), and if applicable in the capacities shown, having been duly authorized to execute

such instrument in such capacities.

Notary Public, State of California

Printed Name of Notary Public

My commission expires: _____

STATE OF CALIFORNIA

COUNTY OF _____

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SS.

On this the ____ day of _____, 2014, before me personally

appeared **JON KENNETH MYERS** and **BONNIE ALOMA SETO** ☐ personally known

to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of California

Printed Name of Notary Public

My commission expires: _____

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

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SS.

On this the ____ day of _____, 2014, before me personally

appeared **GEORGE F. NARDIN** ☐ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

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SS.

On this the ____ day of _____, 2014, before me personally

appeared **MARIANNE K. WHITING** ☐ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawaii

Printed Name of Notary Public

My commission expires: _____

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Doc. Date: _____

No. of Pages: _____ Jurisdiction: _____ Circuit
(in which notarial act is performed)

Signature of Notary

Date of Certificate

Printed Name of Notary

(Official Stamp or Seal)

EXHIBIT A-1

FIRST:

Apartment No. 1129 Kooahoo Place of the Condominium Project known as "1129/1129A KOOHOO PLACE", as established by Declaration of Horizontal Property Regime dated March 5, 1988, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Land Court Document No. 1575580, and as shown on Condominium Map No. 680 and any amendments thereto.

Together with appurtenant easements as follows:

- (A) An exclusive easement to use Parking Space(s), if any, as shown in said Declaration, as amended.
- (B) Non-exclusive easement in the common elements designed for such purposes for ingress to, egress from, utility services for and support of said Apartment, in the other common elements for use according to their respective purposes.
- (C) Exclusive easements to use other limited common elements appurtenant thereto designated for its exclusive use by the Declaration.

SECOND:

An undivided 50% interest in all common elements of the Project as established for said Apartment by the Declaration, or such other percentage interest as hereinafter established for said Apartment by any amendment of the Declaration, as tenant in common with the other owners and tenants thereof.

The land upon which said Condominium Project "1129/1129-A KOOHOO PLACE" is located is described as follows:

All of that certain parcel of land situate at Kailua, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT 152-B-1, area 44,676 square feet, more or less, as shown on Map 67, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Application No. 505 of Helene Irwin Crocker;

Together with a perpetual right of way as an easement for easements appurtenant to said above described premises in common with all others entitled, over and along each and all of the several strips of land leading from

Mokulua Drive to the high water mark on the sea, described and shown on Map 2 of said Land Court Application No. 505, as Lots B, C, D, E, F, G and H;

Being the land(s) described in Transfer Certificate of Title No. 538,500 issued to MICHAEL ANDRE BERUBE, unmarried, as to an undivided 50% interest.

BEING THE PREMISES ACQUIRED BY APARTMENT DEED

GRANTOR: ERIC DEAN AUST and DEBRA ANN AUST,
husband and wife

GRANTEE: MICHAEL ANDRE BERUBE, unmarried, as
Tenant in Severalty

DATED: August 27, 1999

FILED: Land Court Document No. 2571414

TMK: (1) 4-3-005-042

EXHIBIT A-2

All of those certain parcels of land situate at Kailua, District of Koolaula, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 151-A-1, area 39,184 square feet, more or less, and 152-C-1, area 9,045 square feet, more or less, as shown on Map 67, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 505 of Helene Irwin Crocker;

Together with a perpetual right of way as an easement or easements appurtenant to said above described premises, in common with all others entitled, over and along each and all of the several strips of land, leading from Mokulua Drive to the highwaters mark of the sea, described and shown on said Map as Lots B, C, D, E, F, G and H.

Together with an easement and right of way for the purposes of ingress and egress along and upon Easement "A" over and across Lots 151-A-1 and 152-C-1, as shown on said Map 67, as granted by instrument dated September 11, 1954, filed as Land Court Document No. 166196;

Being land(s) described in Transfer Certificate of Title No. 594,661 issued to ALLEN L. CLARK, as Trustee under that certain unrecorded Allen L. Clark Trust dated October 25, 2001, with full powers to sell, mortgage, lease or otherwise deal with the land, as to an undivided 1/2 interest, and JENNIFER COOK CLARK, as Trustee under that certain unrecorded Jennifer Cook Clark Trust dated October 25, 2001, with full powers to sell, mortgage, lease or otherwise deal with the land, as to an undivided 1/2 interest, as Tenants in Common.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR: ALLEN LEROY CLARK, also known as ALLEN L. CLARK, and JENNIFER COOK CLARK, husband and wife

GRANTEE: ALLEN L. CLARK, as Trustee under that certain unrecorded Allen L. Clark Trust dated October 25, 2001, with full powers to sell, mortgage, lease or otherwise deal with the land, as to an undivided one-half (1/2) interest, and JENNIFER COOK CLARK, as Trustee under that certain unrecorded Jennifer Cook Clark Trust dated October 25, 2001, with full powers to sell, mortgage, lease or otherwise deal with the land, as to an undivided one-half (1/2) interest, as Tenants in Common

DATED: October 25, 2001

FILED: Land Court Document No. 2748657

TMK: (1) 4-3-005-041

EXHIBIT A-3

All of those certain parcels of land situate at Kailua, District of Koolaula, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 155-F-1-B, area 21,385 square feet, more or less, as shown on Map 73,
155-G-1, area 17,334 square feet, and
156-F-1, area 17,556 square feet, more or less, as shown on Map 67, of
the "LANIKAI BEACH TRACT", the maps above referred to by numbers are
filed in the Office of the Assistant Registrar of the Land Court of the State of
Hawaii with Land Court Application No. 505 of Helene Irwin Crocker;

Together with a perpetual right of way as an easement or easements
appurtenant to said above granted premises, in common with all others
entitled, over and along each and all of the several strips of land, leading from
Mokulua Drive to the high water mark of the sea, described and shown on
Map 2 of said Application No. 505 as Lots B, C, D, E, F, G and H;

Being land(s) described in Transfer Certificate of Title No. 678,391 issued to
LOIS B. CROZER, Trustee of the Lois B. Crozer Trust dated December 5,
2003, with full powers to sell, mortgage, lease or otherwise deal with the land.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR: LOIS BEDIANT CROZER, unmarried

GRANTEE: LOIS B. CROZER, Trustee of the Lois B. Crozer
Trust dated December 5, 2003, with full powers to
sell, mortgage, lease or otherwise deal with the land

DATED: December 5, 2003

FILED: Land Court Document No. 3045914

TMK: (1) 4-3-006-012

EXHIBIT A-4

All of that certain parcel of land situate at Kailua, District of Koolaula, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 152-A-1, area 10,173 square feet, and 153-B-1, area 31,414 square feet, of the subdivision of Lots 152-A and 153-B of the "LANIKAI BEACH TRACT", as shown on Map 67, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 505 of Helen Irwin Crocker;

Together with a perpetual right of way as an easement or easements appurtenant to said above described premises, in common with all others entitled, over and along each and all of the several strips of land, leading from Mokulua Drive to the high water mark of the sea, described and shown on said map as Lots B, C, D, E, F, G and H;

Being land(s) described in Transfer Certificate of Title No. 1,061,965 issued to LOUIS FRANK D'AVANZO and TANYA JESSICA D'AVANZO, husband and wife, as Tenants by the Entirety.

**BEING THE PREMISES ACQUIRED BY GIFT WARRANTY
DEED**

GRANTOR: LOUIS FRANK D'AVANZO, husband of Tanya
Jessica D'Avanzo

GRANTEE: LOUIS FRANK D'AVANZO and TANYA
JESSICA D'AVANZO, husband and wife, as
Tenants by the Entirety

DATED: June 6, 2013

FILED: Land Court Document No. T-8565100

TMK: (1) 4-3-005-043

EXHIBIT A-5

All of that certain parcel of land situate at Kailua, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOT 150-A, area 21,746 square feet, more or less, as shown on Map 14; and

LOT 151-B-1, area 28,969 square feet more or less, as shown on Map 67 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 505 of Helene Irwin Crocker;

Together with a perpetual right of way as an easement or easements appurtenant to said above described premises, in common with all others entitled, over and along each and all of the several strips of land, leading from Mokulua Drive to the highwater mark of the sea, described and shown on said Map as Lots B, C, D, E, F, G and H.

Together with an easement and right of way for the purposes of ingress and egress along and upon Easement "A" over and across Lots 151-A-1 and 152-C-1, as shown on said Map 67, as granted by instrument dated September 11, 1954, filed as Land Court Document No. 166196;

Being land(s) described in Transfer Certificate of Title No. 1,006,011 issued to GILBERT KIRCHNER, JR. and KIM KIRCHNER, Co-Trustees of The Kirchner Family Living Trust under agreement dated May 28, 2002, with full powers to sell, mortgage, lease or otherwise deal with the land.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED
(SUBJECT TO "AS IS" CONDITION)

GRANTOR: JOHN CARL DALTON and CANDICE CARLA
PACHECO, husband and wife

GRANTEE: GILBERT KIRCHNER, JR. and KIM KIRCHNER,
Co-Trustees of The Kirchner Family Living Trust
under agreement dated May 28, 2002, with full
powers to sell, mortgage, lease or otherwise deal
with the land

DATED: November 29, 2010

FILED: Land Court Document No. 4027244

EXHIBIT A-6

All of that certain parcel of land situate at Kailua, District of Koolaula, City and County of Honolulu, State of Hawaii, described as follows:

LOT 235, area 1.294 acres, more or less, as shown on Map 86, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 505 of Helene Irwin Crocker.

Together with a perpetual right of way as an easement or easements appurtenant to said above described land in common with all others entitled, over and along each and all of the several strips of land, each fifteen feet wide, leading from Mokulua Drive as the high water mark of the sea described and shown on Map 1 as Lots B, C, D, E, F, G, and H;

Being land(s) described in Transfer Certificate of Title No. 456,585 issued to JON KENNETH MYERS and BONNIE ALOMA SETO, husband and wife, as Tenants by the Entirety.

BEING THE PREMISES ACQUIRED BY SPECIAL TRUSTEE'S DEED

GRANTOR: HAWAIIAN TRUST COMPANY, LTD., a Hawaii corporation

GRANTEE: JON KENNETH MYERS and BONNIE ALOMA SETO, husband and wife, as Tenants by the Entirety

DATED: September 8, 1995 but effective as of September 7, 1994

FILED: Land Court Document No. 2237086

TMK: (1) 4-3-006-013

EXHIBIT A-7

All of those certain parcels of land situate at Kailua, District of Koolaupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 153A-1, area 25,994 square feet, more or less, and 154B-1, area 12,494 square feet, more or less, of the "LANIKAI BEACH TRACT", as shown on Map 67, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 505 of Helen Irwin Crocker;

Together with a perpetual right of way as an easement or easements appurtenant to said above described premises, in common with all others entitled, over and along each and all of the several strips of land, leading from Mokulua Drive to the high water mark of the sea, described and shown on Map 2 of said Application No. 505 as Lots B, C, D, E, F, G and H;

Being land(s) described in Transfer Certificate of Title No. 1,046,378 issued to GEORGE F. NARDIN, Trustee of the George F. Nardin Trust dated August 10, 2012, with full powers to sell, mortgage, lease or otherwise deal with the land.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR: GEORGE FREDERIC NARDIN

GRANTEE: GEORGE F. NARDIN, Trustee of the George F. Nardin Trust dated August 10, 2012

DATED: August 10, 2012

FILED: Land Court Document No. T-8260269

TMK: (1) 4-3-006-011

EXHIBIT A-8

All of those certain parcels of land situate at Kailua, District of Koolaulupoko, City and County of Honolulu, State of Hawaii, described as follows:

LOTS 154-A-1, area 39,222 square feet, more or less, as shown on Map 67; and 155-F-1-A, area 12,756 square feet, more or less, as shown on Map 73, of the "LANIKAI BEACH TRACT", the maps above referred to by numbers are filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 505 of Helene Irwin Crocker;

Together with a perpetual right of way as an easement or easements appurtenant to said above granted premises, in common with all others entitled, over and along each and all of the several strips of land, leading from Mokulua Drive to the high water mark of the sea, described and shown on Map 2 of said Application No. 505 as Lots B, C, D, E, F, G and H;

Being land(s) described in Transfer Certificate of Title No. 1,051,265 issued to MARIANNE K. WHITING, Trustee of The Marianne K. Whiting Trust dated April 15, 2005, with full powers to sell, mortgage, lease or otherwise deal with the land.

BEING THE PREMISES ACQUIRED BY QUITCLAIM DEED

GRANTOR: MARIANNE K. WHITING, also known as MARIANNE KIBLER WHITING, Trustee under that certain Trust Agreement dated May 18, 1990, made by Evans K. Whiting as Settlor

GRANTEE: MARIANNE K. WHITING, Trustee of The Marianne K. Whiting Trust dated April 15, 2005, with full powers to sell, mortgage, lease or otherwise deal with the land

DATED: November 9, 2012

FILED: Land Court Document No. T-8359454

TMK: (1) 4-3-006-074

